

ALEJANDRO F. MICHEL,)	No. C 08-1724 JSW (PR)
Petitioner,)	
vs.)	ORDER DENYING
J. WALKER, Warden,)	CERTIFICATE OF
Respondent.)	APPEALABILITY
)	(Docket no. 12)

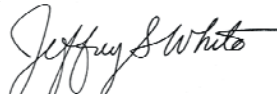
A judge shall grant a COA “only if the applicant has made a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). “Determining whether a COA should issue where the petition was dismissed on procedural grounds has two components, one directed at the underlying constitutional claims and one directed at the district court’s procedural holding.” *Slack v. McDaniel*, 529 U.S. 473, 484-85 (2000). “When the district court denies a habeas petition on procedural grounds without reaching the prisoner’s underlying constitutional claim, a COA should issue when the prisoner shows, at least, that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling.” *Id.* at 484; *see James v. Giles*, 221 F.3d 1074, 1077 (9th Cir. 2000). As each of these components is a

1 “threshold inquiry,” the federal court “may find that it can dispose of the application in a
2 fair and prompt manner if it proceeds first to resolve the issue whose answer is more
3 apparent from the record and arguments.” *Slack*, 529 U.S. at 485. Supreme Court
4 jurisprudence “allows and encourages” federal courts to first resolve the procedural
5 issue. *See id.*

6 Petitioner has not established that “jurists of reason would find it debatable
7 whether the district court was correct in its procedural ruling.” *Id.* at 484. Accordingly,
8 the request for a certificate of appealability is DENIED (docket no. 12). The Clerk of
9 Court shall forward this order, along with the case file, to the United States Court of
10 Appeals for the Ninth Circuit. *United States v. Asrar*, 116 F.3d 1268, 1270 (9th Cir.
11 1997).

12 IT IS SO ORDERED.

13 DATED: May 26, 2009

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16 JEFFREY S. WHITE
17 United States District Judge
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1 UNITED STATES DISTRICT COURT
2 FOR THE
3 NORTHERN DISTRICT OF CALIFORNIA
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6 ALEJANDRO F. MICHEL,
7 Plaintiff,

Case Number: CV08-01724 JSW

CERTIFICATE OF SERVICE

8 v.


9 WILLIAM T. SULLIVAN et al,
10 Defendant.
11 _____/

12 I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District
13 Court, Northern District of California.

14 That on May 26, 2009, I SERVED a true and correct copy(ies) of the attached, by placing said
15 copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing
16 said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery
17 receptacle located in the Clerk's office.

18 Alejandro F. Michel
19 T86169
20 CSP-Sacramento
P.O. Box 290066
Represa, CA 95671

21
22 Dated: May 26, 2009


Richard W. Wieking, Clerk
By: Jennifer Ottolini, Deputy Clerk